IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.:1013 of 2002.

Decided on: 01.05.2007.

Kartar Chand Jamwal.

… … … Petitioner.

Versus

PNB and others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioner: **Mr. N.K. Thakur, Advocate.**

For the Respondents: **Mr. Ajay Kumar, Advocate.**

Rajiv Sharma, Judge (Oral):

By way of this petition, the petitioner has sought the following reliefs:-

i) To quash the impugned Annexures P-5 and P-6 thereby directing the respondents-Bank to refix the pension of the petitioner at the rate of Rs.4407 as the updated last pay of the petitioner was Rs.8814/- on the date of his voluntary retirement.

Whether reporters of local papers may be allowed to see the judgment? Yes.

ii) To direct the respondents to produce the entire record qua the petitioner for the kind perusal of this Hon'ble Court and after perusing the same the respondents-Bank may please be directed to refix the pension of the petitioner as per sub clause 5 of Clause 29 in Chapter V.

iii) Any other or further order which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may please be passed in favour of the petitioner and justice be done to him."

The brief facts necessary for adjudication of this petition are that the petitioner had been permitted to seek voluntary retirement on 19.12.2000 under the PNB Employees Voluntary Retirement Scheme, 2000. The petitioner was entitled to pension on the basis of para 3.5 of the Scheme as per PNB (Employees') Pension Regulations, 1995. The respondents-Bank has amended the Regulation 28 of the PNB (Employees') Pension Regulations, 1995 on 19.5.2002.

Mr. N.K. Thakur appearing on behalf of the petitioner has strenuously argued that his client has sought voluntary retirement w.e.f. 19.12.2000 on the basis of terms enumerated in Annexure P-1, dated 29th September, 2000. It will be apt to reproduce para 3.5 of the Scheme for better appreciation of the submissions made by Mr. N.K. Thakur as under:-

"An employee seeking voluntary retirement under the Scheme will be eligible for the following

benefits in addition to the ex-gratia amount mentioned in para 6 of the Scheme:-

i) Gratuity as per Payment of Gratuity Act, 1972 or Gratuity payable under the service Rules as the case may be, as per existing rules;

OR

ii) a) Pension (including commuted value of pension) as per PNB (Employees') Pension Regulations, 1995.

b) Bank's contribution towards PF as per existing rules.

iii) Leave encashment as per existing rules."

Mr. Ajay Kumar, learned counsel appearing on behalf of respondents-Bank has contended that the petitioner will not be entitled to the pension under the PNB (Employees') Pension Regulations, 1995 on the basis of circular, i.e. Annexure R-3, dated 14th May, 2002 whereby Regulation 28 has been substituted by new Regulation.

I have heard the parties and perused the record carefully.

The petitioner had sought voluntary retirement as per the provisions of PNB Employees Voluntary Retirement Scheme, 2000 w.e.f. 19.12.2000. It is evident from the contents of para 3.5 of the Scheme that the petitioner was entitled to pension as per PNB (Employees') Pension Regulations, 1995. The amendment has been carried out in the PNB (Employees') Pension Regulations, 1995 vide Annexure R-3, dated 14th May, 2002 whereby existing Regulation 28 has been replaced. The

petitioner has got a vested right to get the pension under the unamended Regulation 28 of the PNB (Employees') Pension Regulations, 1995. The right of the petitioner to get the pension as per para 3.5 of the Scheme could not be impaired on the basis of Annexure R-3, dated 14th May, 2002 even though the same has been made effect from 1st September, 2000. The petitioner has sought voluntary retirement on the basis of conditions enumerated in the Scheme at the time the petitioner sought voluntary retirement, i.e. 19.12.2000. The petitioner had definitely in his mind at the time of seeking voluntary retirement that as per para 3.5 of the Scheme, he will be entitled to pension as per PNB (Employees') Pension Regulations, 1995. The petitioner on the basis of express condition enumerated in para 3.5 of the Scheme has altered his position to his detriment by seeking voluntary retirement on 19.12.2000 and the respondents-Bank is estopped from violating the conditions as enumerated in the Scheme on the basis of which the petitioner was entitled to get pension.

The Hon'ble Supreme Court in **Chairman, Railway Board and others vs. C.R. Rangadhamaiah and others, (1997) 6 SCC 623** has held as under:-

> **"Apart from being violative of the rights then available under Article 31(1) and 19(1)(f), the impugned amendments, in so far as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the**

> **said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in rule 2544 that were in force at the time of their retirement."**

Similarly the Hon'ble Supreme Court in **U.P. Raghavendra Acharya and others vs. State of Karnataka and others, (2006) 9 SCC 630** has held that reduction of pension with retrospective effect would be violative of Articles 14 and 16 of the Constitution. Their Lordships have opined as under:-

> **"As the amount calculated on the basis of the revised scales of pay on and from 1.1.1996 to 31.3.1998 has snot been paid to the appellants by the State of Karnataka as ex gratia, and in fact was paid by way of emoluments to which the appellants became entitled to in terms of their conditions of service, which in turn are governed by the statutory rules, they acquired a vested right therein. If the appellants became entitled to the benefits of the revised scales of pay, and consequently to the pension calculated on the said basis in terms of the impugned rules, there would be reduction of pension with retrospective effect which would be violative of Articles 14 and 16 of the Constitution of India."**

The up-shot of the above discussion is that the petitioner is entitled to get all the benefits as per Annexure P-1 dated 29th September, 2000 and Annexure R-3 dated 14th May, 2002 will apply prospectively. The respondents-Bank cannot apply circular, dated 14th May, 2002 retrospectively to impair the

vested rights of the petitioner to get the pension on the basis of Annexure P-1.

Accordingly, this petition is allowed and the respondents-Bank is directed to refix the pension of the petitioner at the rate of Rs.4407/- on the basis of last salary drawn Rs.8814/- on the date of his voluntary retirement i.e. 19.12.2000.

There shall be no order as to costs.

(Rajiv Sharma)
Judge

May 1, 2007
(sck).